**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 697 OF 2005**

Charles Anthony Mendonsa ...Petitioner

Versus

Smt. Catherine Louis Gharshi & Anr ...Respondents

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Mr. Jaydeep S. Deo, counsel for Petitioner

Mr. A.J. Rizvi & J. Fernandes, counsel for Respondent No.1.

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**CORAM: B. H. MARLAPALLE, J.**

**DATED: 12TH APRIL, 2005**

**P. C.:-**

1. Heard Mr. Deo, the learned counsel for the petitioner and Mr. Rizvi with Mr. Fernandes the learned counsel for the respondent No.1.

2. In R.C.S. No. 620 of 2001 an application for temporary injunction at Exh.5 has been filed under Order XXXIX Rule 1 and 2 of C.P.C. and the said application came to be dismissed by the C.J.S.D. at Thane on 19.6.2003. Misc. Civil Appeal No. 79 of 2003 came to be filed before the District Court at Thane against the order of rejecting the application at Exh.5 and the same also came to be dismissed by the III Additional District Judge at Thane on

17.1.2005. Hence, this petition.

3. The trial court noted that the proceedings U/sec. 145 of Cr.P.C. registered as complaint No. 15 of 1998 were initiated and terminated by the order passed by the Executive Magistrate directing the plaintiff to hand over two gunthas of the land to the defendant i.e. Smt. Catherine Louis Gharshi by order dated 9.4.99. The said order was carried before the Sessions Court at Thane in Criminal Revision Application No. 203 of 1999 and the Revision was dismissed by the learned Additional Sessions Judge on 9.4.2001. The trial court relied upon the decision of **Orissa High Court in the case Kalikaprasad Dabs & Anr Vs. Gadadhar Sahu (AIR 1978 Orissa 8)** and held that for prima facie consideration the plaintiff had no case as the order passed by the Special Executive Magistrate had reached finality in view of the order passed by the learned Additional Sessions Judge.

4. The learned counsel for the petitioner submitted that the decision in the case of **Shantikumar Panda Vs. Shakuntala Devi (AIR 2004 SC 115)** supports the case of the plaintiff and the order passed U/sec. 145 of Cr.P.C. and subsequently confirmed by the Sessions Court in Revision Application would have no bearing on the prima facie considerations while

deciding the application filed at Exh.5 for temporary injunction in a subsequent suit. These submissions are fallacious, if regards be had to the observations made by Their Lordships in para 22 in the case of Shantikumar (Supra). It has been clearly held that the civil court shall also respect the orders passed U/sec. 145 of Cr.P.C. and will be loath to arrive at an interim arrangement inconsistent with the one made by the Executive Magistrate. The concurrent view taken by both the Courts below held that the plaintiff had not made out a prima facie, case and the balance of convenience was not in favour of the plaintiff. The order passed by the Additional Sessions Judge was dated 9.4.2001 and the application at Exh.5 was rejected by the trial Court on 19.6.2003.

5. The view taken by both the courts below cannot be, therefore, termed as perverse or manifestly erroneous so as to cause interference in a petition under Article 227 of the Constitution.

6. The petition is therefore, rejected summarily. Ad interim order stands vacated.

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